IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10460 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHRAJBIBI ANVARHUSSEIN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR NS SHETH for Petitioner

MS MANISHA LAVKUMAR AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/06/2000

ORAL JUDGEMENT

#. The deceased Zakirhussein alleged to be the communal riots victim. His mother filed this petition under Article 226 of the Constitution of India and praying for

direction to the respondents to give Rs.2 lacs by way of compensation to her for the death of her son as per the declared policy of the respondent-Government. It is the case of the petitioner that her son had died because of bullet injury in communal riots on 30.1.96.

#. The learned counsel for the petitioner submitted that the son of the petitioner was a victim of communal riots and as a result of the police firing he sustained a bullet injury and died on 30.1.1996 and it is the duty of the respondents to compensate her for this loss of life of her son. It has next been contended that the petitioner be awarded Rs.2 lacs as compensation against State Government. In support of this contention the learned counsel for the petitioner placed reliance on a decision of the High Court of Delhi in the case of Bhajan Kaur Vs. Delhi Administration through The Lt. Governor reported in 1996(38) DRJ 203.

#. Ms.Manisha Lavkumar, learned AGP for the respondents submitted that though as a result of the police firing the son of the petitioner has died but the deceased was hitting with the stones, the petitioner is not entitled for any compensation. Referring to the Government Resolutions dated 18.8.84 and 26.12.92, Ms. Manisha Lavkumar, learned AGP for the respondent contended that as the deceased actively participated in the riot the petitioner is not entitled for the amount of compensation. Referring to the resolution dated 26.12.92 she submits that this pertains only to the ex-gratia relief to be granted to the family / persons effected by the Ayodhya Incident. She further submits that when the petitioner is not eligible for the compensation the question of the quantum of the amount to be granted to her as compensation does not arise. She contended that the decision of the Delhi High Court is not relevant in this case as it pertains to 1984 riots.

#. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties.

#. It is not the case of the petitioner that the deceased was not actively participated in the riots. In the reply affidavit it is stated on oath that the deceased was actively participated in the riot. He was hitting with the stones during the riot. The respondent further stated on oath that the deceased himself assaulted the S.R.P. constable and as a result of which he was not found eligible for compensation. It is not the case of the death of the deceased in the communal riots. The affidavit filed by the respondents and the

averments made therein that the deceased was himself actively participating in the riots had not been controverted. The heavy burden lies on the petitioner to establish her eligibility to get compensation and this has not been discharged. No evidence has been produced to controvert what it is stated by the respondent in the reply affidavit. The facts stated in the reply affidavit stand uncontroverted and therefrom I find that the deceased was not died as a result of communal riots. The eligibility to get compensation as claimed by the petitioner and provided under the resolution is not fulfilled by her in this case and rightly the respondents have not extended the benefits of that resolution in her favour. In this case as the compensation cannot be given to the petitioner for the alleged death of her son, the question of the quantum of compensation that has to be awarded no more remains relevant and accordingly it is not discussed. Similarly the decision of the Delhi High Court on which reliance has been placed by the learned counsel for the petitioner is relevant for quantum and not for the eligibility. So, it is also needs not to be discussed.

As a result of the aforesaid discussion this Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote, J.)

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